IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

CRP.No. 477 of 2007()

AGAINST THE ORDER DATED 26/02/2007 IN EP. 380 /2005 IN OS.677/1998 of II ADDL.SUB COURT,THRISSUR

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REVN. PETITIONER: RESPONDENT/JUDGMENT DEBTOR

ABOOBACKER, S/O.MUHAMMEDKUTTY,
CHOMAYIL HOUSE, CLERK, A.G'S OFFICE,
THRISSUR.

BY ADV. SRI.DINESH MATHEW J.MURICKEN
SRI.P.V.BALAKRISHNAN

RESPONDENT: PETITIONER/DECREE HOLDER

JEWEL ROCK HIRE PURCHASE & KURIES
(P) LTD., THRISSUR.

BY ADV. SRI.P.K.RAVISANKAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON IA 1256/07 IN CRP 477/07

DISMISSED.

SD/- M.N.KRISHNAN, JUDGE.

15/10/2007

M.N.Krishnan, J.

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C.R.P.No.477 of 2007

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Dated this the 15th day of October, 2007.

ORDER

This revision is preferred against the order of the Subordinate Judge, Thrissur in E.P.No.380 of 2005 in O.S.No.677 of 1998. The execution is one for realisation of an amount of Rs.1,57,947/- by arrest and detention of the judgment debtor. Admittedly, the judgment debtor is a clerical staff attached to Accountant General Office at Thrissur. It is his contention that he has got a house and his carry home salary is only Rs.1,350/- after several attachment. It is submitted by him that the landed property which belonged to him had also been attached in other execution petitions and so it has become impossible to sell that property for raising the amount to discharge the decree amount. These are all matters which has to be considered in detail.

2. This Court has held that prima facie when it is proved that there are assets to the judgment debtor, the burden is

discharged by the decree holder and the judgment debtor has to prove how he is not a position to raise the fund to discharge the decree debt. This Court in the decision reported in **Kuppuswamy** v. **P.G. Menon** - 1992 (2) K.L.T. 203 held thus:

> "Where it is proved or admitted or otherwise evident that the judgment debtor owns or possess a house or has got interest therein, the normal presumption is that he is able to pay the debt either by sale or mortgage or creating other encumbrance of the house. In such circumstances, it is open to the judgment-debtor to rebut the presumption and prove either that he does not own or possess the house or that no alienation or encumbrance is possible of that property."

If it is a correct statement of fact that five cents of property had been attached in execution of other decrees, the judgment debtor may not be in a position to sell the property to raise the amount. Similarly, even if one is employed in a Government Department suppose there are successive attachments of his salary and his carry home salary is very meager, then the court may not be in a position to order attachment of salary or arrest to pay the decree debt. These are all matters, which has to be considered in detail

and decided by the court .

3. Therefore, I set aside the order passed by the court below and remit the matter back to the court below for fresh consideration giving permission to the decree holder as well as the judgment debtor to produce additional documents and evidence in support of their respective contentions and the court shall dispose of the matter in accordance with law on the question whether the judgment debtor has means to pay the decree debt and that he is willfully evading payment of the amount. Parties are directed to appear before the court below on 13.11.2007.

Civil Revision Petition is disposed of as above.

M.N.Krishnan,
Judge.

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